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**Review of the efficiency of the administrative and
financial functioning of the United Nations**

Human resources management

Proposed regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission and regulations governing the status, basic rights and duties of the Secretary-General

Report of the Secretary-General

1. In paragraph 20 of his report to the General Assembly at its fifty-fifth session (A/55/928), the Secretary-General indicated that he was expecting to receive comments from the group of special rapporteurs of the Commission on Human Rights on the proposed regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission (A/54/695).

2. Subsequent to the issuance of the above-mentioned report, comments were received from the eighth meeting of special rapporteurs, special representatives, independent experts and chairpersons of working groups of the Commission on Human Rights. Those comments are quoted below, followed by the Secretary-General's observations with respect to the comments.

"Comment of the eighth meeting of special rapporteurs, special representatives, independent experts and chairpersons of working groups of the Commission on Human Rights on the proposed regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission

"1. The meeting considers that, central to the function of mandate holders, is the unique status that they are required to have by virtue of their independence, a status reinforced by the unpaid character of their work. This independence deserves to be reflected explicitly in the commentary. This could be achieved by adding to the commentary to draft regulation 2 (a) language that would confirm that the special circumstances of mandate holders require clear recognition of and respect for their independence and that this notion should be reflected in the interpretation and application of the regulations. The meeting invites the Secretary-General to insert the relevant language.



"2. In order to avoid any interpretation of draft regulation 2 (d) and 2 (f) as limiting the standard practice of mandate holders in their public utterances, the meeting invites the Secretary-General to confirm the position taken in the observations attached to the letter dated 8 February 1999 from the Legal Counsel addressed to the meeting's then Rapporteur, Maurice Copithorne, namely:

'...

'12. As indicated in the commentary to draft regulation 2 (f), the text of this regulation flows from, *inter alia*, the idea that officials and experts on mission must regulate their conduct with the interest of the Organization only in view. Consequently, the prohibition of disclosure of official information without authorization must apply to all officials and experts on mission without exception. However, the commentary makes it clear that the prohibition does not apply if such disclosure is specifically authorized or is [made] in the normal course of duties of the official or expert on mission. Accordingly, if a special rapporteur is required, as part of his or her official duties, to disclose official information to third parties, that would not be a breach of this regulation.

'13. In paragraph 8 [of the observations], it has been established that the Commission on Human Rights has allowed and even encouraged special rapporteurs to publicize their mandates and activities. As it is in the normal course of their duties to disclose information about investigations and other activities falling within or arising from their mandates, such behaviour would not be prohibited by either draft regulation 2 (d) or 2 (f).'

"3. Similarly, in order to avoid any unduly restrictive interpretation of draft regulation 2 (j), concerning compliance with local legal obligations, the meeting invites the Secretary-General to confirm the position taken by the Legal Counsel in the same observations, namely:

'...

'17. This regulation concerns private legal obligations of officials and experts on mission and is intended to ensure, in addition to draft regulation 1 (e), that they will not abuse the privileges and immunities accorded to them in the interest of the United Nations because of their official status with the Organization. This regulation does not interfere with the right and duty of officials and experts on mission properly to discharge their official functions.

'18. Moreover, since experts on mission, including special rapporteurs, are immune from personal arrest or detention and from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their missions, pursuant to sections 22 (a) and (b) of article VI of the General Convention [Convention on the Privileges and Immunities of the United Nations], special rapporteurs are adequately protected from any potential legal action or harassment in connection with their official words or acts.'

3. In regard to paragraph 1 of the comments of the eighth meeting quoted above, the Secretary-General notes that, in paragraphs 4 and 5 of the observations attached to the letter of the Legal Counsel dated 8 February 1999, to which the eighth meeting referred to in the comments quoted above, the Legal Counsel indicated that the independence required of these officials and experts is addressed and implied in draft regulations other than draft regulation 2 (a) (e.g., see draft regulations 1 (b), 2 (b), 2 (c) and 2 (d)). In addition, in a letter dated 26 April 2001, in which certain clarifications were provided to the chairperson of the group of special rapporteurs on the draft regulations (referred to in A/55/928, para. 20), the Legal Counsel indicated that the draft regulations have been elaborated taking into account the "independence" required of officials and experts on mission, with the view of ensuring such independence within the context of their appointment by various parts of the Organization. Nevertheless, in view of paragraph 1 of the comments of the eighth meeting quoted above, the Secretary-General would be prepared to include the following clarification in the appropriate section of the commentary:

"It should also be noted that the Regulations and the Commentary have been elaborated taking into account the independence required of officials and experts on mission."

4. With respect to paragraphs 2 and 3 of the comments of the eighth meeting quoted above, the Secretary-General wishes to confirm the positions set out in paragraphs 12, 13, 17 and 18 of the observations attached to the Legal Counsel's letter dated 8 February 1999.

Conclusion

5. Based on a review of the comments received from the eighth meeting, the Secretary-General would recommend consideration by the General Assembly of the regulations proposed in his previous report (A/54/695), as adjusted in his subsequent report (A/55/928), with the following additional clarification appearing as a new paragraph 4 of the commentary to proposed regulation 1 (a):

"It should also be noted that the Regulations and the Commentary have been elaborated taking into account the independence required of officials and experts on mission."

6. The draft regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission, together with explanatory commentary, as previously issued in annex II to document A/54/695, adjusted in annex II to document A/55/928, and further adjusted as proposed above, are set out in the annex to the present report; the proposed adjustments are shown in bold.*

* The draft regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission, previously issued in document A/54/695, annex I, and adjusted in document A/55/928, annex I, are not reproduced in the present report since the additional clarification proposed in the present report relates only to the commentary, and not to the draft regulations.

Annex

Draft regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission, together with explanatory commentary*

Draft regulation 1 Status

Regulation 1 (a)

The responsibilities of officials other than Secretariat officials (hereinafter referred to as "officials") and of experts on mission are not national but exclusively international.

Commentary

1. The United Nations has persons who perform services for it on a substantially full-time basis but who are not staff members. These persons have consistently been referred to by the General Assembly as "officials other than Secretariat officials". In addition, pursuant to article V, section 17, of the Convention on the Privileges and Immunities of the United Nations^a of 13 February 1946 (hereinafter referred to as the "General Convention"), the Secretary-General has specified and submitted to the Assembly proposals that a number of persons who occupy certain positions within the Organization be accorded the privileges and immunities under articles V and VII of the General Convention, even though they are not staff members. These persons have also been referred to as officials other than Secretariat officials.
2. The United Nations also has experts who perform assignments for the Organization. Article VI of the General Convention provides that experts (other than officials coming within the scope of article V) shall be accorded privileges and immunities necessary to enable them to carry out their missions for the United Nations and specifies a number of those privileges and immunities. These experts have been referred to as "experts on mission".
3. The Regulations and the Commentary, as applied to the Chairman and the Vice-Chairman of the International Civil Service Commission, the Inspectors of the Joint Inspection Unit, and to other officials and experts who perform functions in respect of the common system, in accordance with the statute of the International Civil Service Commission or that of the Joint Inspection Unit, respectively, or other mandates approved by the General Assembly, should be construed in the light of those functions and mandates. References to the United Nations or the United Nations Organization in the context of these Regulations and the Commentary should be applied, bearing in mind that the functions of those officials and experts are related to the common system.
4. It should also be noted that the Regulations and the Commentary have been elaborated taking into account the independence required of officials and experts on mission.

* Previously issued in A/54/695, annex II, and adjusted in A/55/928, annex II.

5. Draft regulation 1 (a) is similar to the second sentence of staff regulation 1.1 (a).^b

* * *

Regulation 1 (b)

Officials **and experts on mission** shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

"I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization."

Commentary

Draft regulation 1 (b), which is similar to staff regulation 1.1 (b), contains the declaration of office of officials and experts on mission.

* * *

Regulation 1 (c)

The Secretary-General shall seek to ensure that the rights and duties of officials and experts on mission, as set out in the General Convention, are respected. The Secretary-General shall also seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for officials and experts on mission carrying out the responsibilities entrusted to them.

Commentary

1. The first sentence of draft regulation 1 (c), which is similar to staff regulation 1.1 (c), codifies an implicit duty that falls upon the Secretary-General, namely, to seek to ensure that the rights and duties of officials and experts on mission as set out in the General Convention are respected (as such rights are granted by Governments, the Secretary-General can only "seek to ensure" that they are respected). The protection accorded to officials and experts on mission under this provision relates to their official acts and thus does not lapse upon cessation of their service for the Organization, or, if they are part-time, on days when they are not in service.

2. The second sentence of draft regulation 1 (c), which reproduces the essence of the second sentence of staff regulation 1.2 (c), sets forth the responsibility of the Secretary-General to seek to ensure the safety of officials and experts on mission.

* * *

Regulation 1 (d)

Experts on mission will receive a copy of the present Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (hereinafter referred to as the "Regulations") when they receive documentation from the United Nations relating to their mission and will be

required to acknowledge receipt of the Regulations. Officials will receive a copy of the Regulations at an appropriate opportunity.

Commentary

1. Experts on mission retained by the Secretariat sign a special services agreement or receive a letter or other documentation indicating the scope of their mission for the Organization. The special services agreement or other documentation will incorporate the Regulations by reference, and experts will be required to acknowledge that they will abide by the Regulations.
2. At times, legislative bodies entrust tasks to individuals to perform assignments for those bodies (for example, members and special rapporteurs of the International Law Commission and other bodies). Those individuals have the status of experts on mission. Although their appointments may have been concluded without the signature of any document of appointment, their attention will be drawn to the Regulations when they receive documentation from the Secretariat relating to their functions and/or their assignment. That documentation will include a copy of the Regulations explaining that they were adopted by the General Assembly and thus constitute part of the conditions of those individuals' assignment for the United Nations.
3. Officials will receive a copy of the Regulations at an appropriate time, for example, when they make the declaration of office (see draft regulation 1 (b)).

* * *

Regulation 1 (e)

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments.

Commentary

1. Draft regulation 1 (e), which deals with privileges and immunities, is similar to staff regulation 1.1 (f) (see paras. 32, 49, 54 and 55 of the report on standards of conduct in the International Civil Service 1954,⁵ which was prepared by the International Civil Service Advisory Board (hereinafter referred to as the "ICSAB report")).
2. Draft regulation 2 (j) specifies the obligations on those who are covered by such privileges and immunities to honour their private legal obligations.
3. Pursuant to article V, section 20, and article VI, section 23, of the General Convention, it is only the Secretary-General who has the right to waive the privileges and immunities accorded to officials and experts on mission. In deciding

whether such privileges and immunities exist and whether they should be waived, the Secretary-General may take into account the views of the legislative body that appointed the officials or experts on mission.

* * *

Draft regulation 2 Conduct

Regulation 2 (a)

Officials and experts on mission shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

Commentary

1. Draft regulation 2 (a), which describes basic values expected of officials and experts on mission, is similar to staff regulation 1.2 (b).
2. The first sentence of draft regulation 2 (a) is derived from Article 101, paragraph 3, of the Charter of the United Nations by virtue of affirmatively placing upon officials and experts on mission the obligation to uphold the highest standards of efficiency, competence and integrity. As pointed out in paragraph 4 of the ICSAB report, the concept of integrity includes "honesty, truthfulness, fidelity, probity and freedom from corrupting influences".

* * *

Regulation 2 (b)

In the performance of their duties, officials and experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization.

Commentary

Draft regulation 2 (b), which is similar to staff regulation 1.2 (d), flows from the first sentence of Article 100, paragraph 1, of the Charter of the United Nations (see ICSAB report, paras. 7, 18 and 31).

* * *

Regulation 2 (c)

Officials and experts on mission shall discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all individuals covered by the present Regulations.

Commentary

1. Draft regulation 2 (c) in substance contains the same obligations as are contained in staff regulation 1.2 (e) applicable to staff. The first sentence of

regulation 2 (c) sets forth an idea that is contained in staff regulation 1.1 (a) and in staff regulation 1.1 (b), which contains the written declaration of office, that is to say, the idea that staff must regulate their conduct with the interests of the Organization only in view (see ICSAB report, para. 4).

2. The second sentence of draft regulation 2 (c) focuses on the concept of loyalty to the aims, principles and purposes of the Organization as set forth in the Charter of the United Nations (which is alluded to in the declaration contained in draft regulation 1 (b)) (ibid., paras. 5, 6 and 21).

* * *

Regulation 2 (d)

While the personal views and convictions of officials and experts on mission, including their political and religious convictions, remain inviolable, they shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. Officials and experts on mission shall conduct themselves at all times in a manner befitting their status. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

Commentary

1. Draft regulation 2 (d) is similar to staff regulation 1.2 (f). The core idea of conduct befitting an international civil servant was considered by the International Civil Service Advisory Board in 1954. The Advisory Board remarked that "high standards of conduct are best attained by a universal understanding among staff members of the relation between their conduct and the success of the international organizations, and by the development of a strong tradition among men and women who are jealous of the reputation of the organizations that they serve and are anxious to safeguard it". (See ICSAB report, para. 2; also para. 4 on the integrity expected of international civil servants; paras. 5, 6 and 21 on loyalty; paras. 7 and 18 on independence; and paras. 8 and 48 on impartiality.)

2. In respect of the last sentence of the draft regulation, it would be for the Organization to characterize an action or pronouncement as adversely reflecting on the status of an official or an expert on mission.

* * *

Regulation 2 (e)

Officials and experts on mission shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor shall they use their office for personal reasons to prejudice the positions of those they do not favour.

Commentary

1. Draft regulation 2 (e), which is similar to staff regulation 1.2 (g), codifies principles set out in the ICSAB report (see paras. 17, 28 and 42). The use of one's office for personal gain is clearly unacceptable. This includes not only conducting a business from a United Nations office but also such activities as using United Nations facilities for a business, using the United Nations name, logo or address for a business and approving a contract for a family business without disclosure. Draft regulation 2 (e) also reflects the principle set out in staff regulation 1.2 (g) that a staff member shall not use information that has not been made public for the private advantage of the staff member or of any third party.

2. The draft regulation, for clarity, makes specific reference to prohibiting an official or expert on mission from so favouring a third party, including family or friends, as to enable that third party to profit from the position of the official or expert on mission or from the exercise of his or her functions. The term "friends" is broad and seeks to encompass not only friends as normally understood, but also relationships that are not recognized by the United Nations as creating a dependency.

3. The draft regulation also prohibits the use of office or knowledge gained from that office for personal reasons to prejudice or harm third parties.

* * *

Regulation 2 (f)

Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person or any other source, any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be conferred by the body that appointed them. These obligations do not cease upon the cessation of their official functions.

Commentary

1. Draft regulation 2 (f), which is similar to staff regulation 1.2 (i), reflects the principle that official information may not be used for private purposes, except with authorization. This flows from the idea that officials and experts on mission are obligated to regulate their conduct with the interests of the Organization only in view (see ICSAB report, para. 4) and also from the requirements of draft regulation 2 (e). It follows that permission must be obtained for disclosure to third parties of information that has not been made public, unless such disclosure is specifically authorized or is in the normal course of duties of the official or expert on mission. Authorization of the Secretary-General is not required for officials and experts on mission who have not been appointed by the Secretary-General. Those officials and experts on mission would require the authorization of the body that had appointed them if the communication of the information was not a normal part of their duties.

2. The last sentence of the draft regulation provides that the obligations contained in the provision do not cease upon cessation of official functions. It may be difficult

to enforce such a provision, but, at the very least, if a former official or expert on mission ignored the obligations contained in this draft regulation, the official file of the former official or expert on mission could be noted so as to prevent his or her re-engagement.

* * *

Regulation 2 (g)

Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out **during the course of their official functions** while in the service of the United Nations.

Commentary

To ensure that officials and experts are perceived as impartial, draft regulation 2 (g) prohibits the acceptance of any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out **during the course of their official functions** while in the service of the United Nations.

* * *

Regulation 2 (h)

Officials and experts on mission shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for them or the profit-making, business or other concern to benefit from such association or financial interest by reason of their position with the United Nations. Officials or experts on mission who are in such a situation shall either dispose of that financial interest or formally excuse themselves from participating with regard to any involvement in that matter that has given rise to the conflict-of-interest situation.

Commentary

1. The first sentence of draft regulation 2 (h) is similar to staff regulation 1.2 (m). The purpose of the provision is to put officials and experts on mission on notice that they cannot be actively associated with a profit-making, business or other concern, if either the concern or the official or expert on mission is to profit therefrom by reason of the association with the Organization. It will be for the Secretary-General or the appointing authority to judge whether a particular act has given rise to a conflict-of-interest situation.

2. The second sentence of draft regulation 2 (h) is similar to the second part of staff rule 101.2 (n) which deals with the consequences of a staff member's having a possible conflict-of-interest situation. In such cases, the official or expert on mission shall dispose of the interests or, if practicable, shall excuse himself or herself from dealing with the matter on behalf of the Organization.

3. Generally, experts on mission are appointed on a part-time basis, and it is therefore likely that they are engaged in other activities, including employment, when they are not performing services for the Organization. While there is no

question that experts on mission may be so engaged, they must ensure that those activities are not incompatible with their status or functions as experts on mission.

* * *

Regulation 2 (i)

Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h).

Commentary

Draft regulation 2 (i) is similar to, but more general than, staff regulation 1.2 (n), which requires all staff at the assistant secretary-general level and above to submit financial disclosure statements upon appointment and at intervals as prescribed by the Secretary-General, in respect of themselves and their dependent children, including any substantial transfers of assets and property to spouses and dependent children from the staff member or from any other source that might constitute a conflict of interest. This requirement is designed to minimize the risk of a perception of officials and experts on mission as using their position for personal gain. The draft regulation enables the Secretary-General to require officials and experts on mission to file financial disclosure statements, which will remain confidential and will be used only in dealing with conflict-of-interest situations, for example, in assessing whether an official was in such a situation.

* * *

Regulation 2 (j)

Officials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.

Commentary

1. Draft regulation 2 (j), which is similar to staff rule 101.2 (c), is really an amplification of draft regulation 1 (e) which provides that the privileges and immunities of the Organization afford no excuse for non-performance of private obligations (see ICSAB report, paras. 32, 54 and 55).
2. Draft regulation 2 (j) makes clear that private obligations must be honoured. It is the responsibility of those subject to the present Regulations, if they have a court order against them that they contest, to avail themselves of all means existing under the applicable national law to appeal the order and/or to secure relief from the obligation to comply with the order pending its appeal.

* * *

Regulation 2 (k)

Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, at the workplace or in connection with work, is prohibited.

Commentary

Draft regulation 2 (k), which is similar to staff rule 101.2 (d), reproduces the core of Secretary-General's bulletin ST/SGB/253 of 29 October 1992, which established United Nations policy on equal treatment of men and women in the Secretariat and also prohibited all forms of discrimination or harassment.

* * *

Regulation 2 (l)

Officials and experts on mission shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

Commentary

Draft regulation 2 (l) is similar to staff rule 101.2 (f) which prohibits the intentional misrepresentation of an official title or duties to outside parties, for example, by placing misleading titles on business cards. The use of the word "intentional" makes clear that this does not refer to careless or accidental acts.

* * *

Regulation 2 (m)

Officials and experts on mission participating, as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from the Government, intergovernmental organization, non-governmental organization or private source, accommodation and travel and subsistence allowance generally in line with those payable by the United Nations. In such cases, the travel and subsistence allowance that may otherwise be payable by the United Nations shall be reduced in the same manner as in respect of staff members of the Organization.

Commentary

1. Draft regulation 2 (m), which is similar to staff rule 101.2 (s), deals with the issue of participation at various official functions. Officials and experts on mission, who as part of their official functions participate in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, may receive from it accommodation and travel and subsistence allowance generally in line with those payable by the United Nations, and in such cases the allowances that may otherwise be payable by the United Nations shall be reduced in the same amount as in respect of staff members of the Organization. Such provisions are presently found in staff rule 107.15 (a).

2. It should be noted that accommodation and travel and subsistence allowance may be accepted only if doing so would be appropriate to the status of officials and

experts on mission and to the integrity, independence and impartiality that are required by that status. There may therefore be situations in which it would not be appropriate to accept those allowances from a Government, intergovernmental organization, non-governmental organization or other private source.

* * *

Draft regulation 3 Accountability

Officials and experts on mission are accountable to the United Nations for the proper discharge of their functions.

Commentary

Draft regulation 3, which is similar to staff regulation 1.3 (a), makes clear that officials and experts on mission are accountable for their actions. The method of accountability may vary. For officials appointed by the General Assembly, that accountability would be a matter for the Assembly. For experts on mission, it would be the Secretary-General or the appointing authority who could terminate an assignment or otherwise admonish the expert.

Notes

^a United Nations, *Treaty Series*, vol. I, No. 4, p. 15.

^b Hereinafter, staff regulations and rules refer to the provisions contained in article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules which came into effect on 1 January 1999, pursuant to General Assembly resolution 52/252.

^c A/52/488 and Add.1.